



DEPARTMENT OF EDUCATION

[Docket ID ED-OFO-0004-2022]

PRIVACY ACT OF 1974; System of Records

AGENCY: Office of Finance and Operations, U.S. Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) is publishing this notice of a new system of records titled "Reasonable Accommodation Program Files" (RAPF) (18-17-01). This system contains records concerning reasonable accommodation requests on the basis of disability and religion under the Rehabilitation Act of 1973, as amended (Rehabilitation Act), Americans with Disabilities Act of 1990, as amended (ADA), and Title VII of the Civil Rights Act of 1964, as amended (Title VII), as applicable, that are submitted to the Department by covered individuals.

DATES: Submit your comments on this new system of records notice on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This new system of records will become effective upon publication in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] unless the new system of records notice needs to be changed as a result of public

comment. The routine uses listed in the paragraph titled "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES" will become effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the new system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes to the system of records or routine uses resulting from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the "Help" tab.

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this new system of records notice, address them to: Michael Chew, Director, Office of Equal Employment Opportunity Services,

U.S. Department of Education, 400 Maryland Avenue, SW,
Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Michael Chew, Director,
Office of Equal Employment Opportunity Services, U.S.
Department of Education, 400 Maryland Avenue, SW,
Washington, DC 20202.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This system of records contains records concerning reasonable accommodation requests on the

basis of disability and religion under the Rehabilitation Act, ADA, and Title VII, as applicable, submitted to the Department by covered individuals. Individuals covered by this system of records are: current and former Department employees; applicants for employment at the Department; authorized representatives of the foregoing covered employees and applicants (e.g., a family member or an attorney who is representing them); and the foregoing covered employees' and applicants' medical providers.

The system will be used to, among other things, process, track the processing of, provide, and make decisions about these reasonable accommodation requests to the extent necessary to ensure Department-wide compliance with applicable laws and regulations while preserving and maintaining the confidentiality of all information (e.g., medical and religious information) submitted in support of such requests, to the extent required by law.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Denise Carter,
Acting Assistant Secretary,
Office of Finance and Operations.

For the reasons discussed in the preamble, the U.S. Department of Education (Department) publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Reasonable Accommodation Program Files (RAPF) (18-17-01).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Equal Employment Opportunity Services (OEEOS), U.S. Department of Education (Department), 400 Maryland Avenue, SW, Washington, DC 20202.

Federal Student Aid (FSA), U.S. Department of Education, 830 1st Street, NE, Washington, DC 20002.

Office of Inspector General (OIG), U.S. Department of Education, 550 12th Street, SW, Potomac Center Plaza, Washington, DC 20202.

Clinical Health Services, Federal Occupational Health Program Support Center (FOH), U.S. Department of Health and Human Services (HHS), 7700 Wisconsin Avenue, Suite 7201, Bethesda, MD 20814 (contractor).

SYSTEM MANAGER(S):

Reasonable Accommodation Program Manager (RAPM), OEEOS, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

RAPM, FSA, U.S. Department of Education, 830 1st Street, NE, Washington, DC 20002.

RAPM, OIG, U.S. Department of Education, 550 12th Street, SW, Potomac Center Plaza, Washington, DC 20202

Occupational Medicine Consultant, Clinical Health Services, FOH, HHS, 7700 Wisconsin Avenue, Suite 7201, Bethesda, MD 20814 (contractor).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Rehabilitation Act of 1973, as amended (29 U.S.C. 791 et seq.) (Rehabilitation Act); Americans with Disabilities Act of 1990, as amended (ADA) (42 U.S.C. 12101 et seq.); 29 CFR Parts 1614, 1630, and 1640; Executive Order 13164 of July 26, 2000; Equal Employment Opportunity Commission's Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Directives Transmittal Number 915.003, issued October 20, 2000; Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) (Title VII); Equal Employment Opportunity Commission's Compliance Manual on Religious Discrimination, Directives Transmittal Number 915.063, issued January 15, 2021; and, Executive Order 14043 of September 9, 2021 (requiring, with certain exceptions, COVID-19 vaccinations for all Federal employees).

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purposes of: (1) processing, tracking the processing of, providing, and making decisions about reasonable accommodation requests on the basis of disability and religion under the Rehabilitation Act, ADA, and Title VII, as applicable, submitted to the Department by covered individuals, to the extent that maintaining such records is necessary to ensure Department-wide compliance with applicable laws and regulations while preserving and maintaining the confidentiality of information (e.g., medical and religious information) submitted in support of such requests, to the extent required by law; and (2) the Department's RAPMs and OEEOS staff developing cumulative records, without individual identifiers, to track the Department's performance concerning the provision of reasonable accommodations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on the following categories of individuals who request a reasonable accommodation from the Department on the basis of a disability or religion under the Rehabilitation Act, ADA, or Title VII, as applicable, including individuals who obtain leave under the Family Medical Leave Act of 1993 (FMLA) as a reasonable accommodation:

- (1) Current and former Department employees;
- (2) Applicants for employment at the Department;

(3) Persons authorized to represent the foregoing covered employees and applicants (e.g., a family member or an attorney who is representing them); and

(4) The medical providers of the foregoing covered employees and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains the following records pertaining to reasonable accommodation requests on the basis of disability and religion under the Rehabilitation Act, ADA, and Title VII, as applicable, made to the Department:

- (1) Requestor's full name and contact information;
- (2) Requestor's status vis-à-vis the Department (e.g., employee, employment applicant);
- (3) Date of the request;
- (4) If applicable, the date, time, location, and/or description or title of the event, meeting, program, or activity conducted by the Department for which the request is made;
- (5) If applicable, the job or jobs (i.e., occupational series, grade level, program office, and/or position description) for which the request is made;
- (6) Information concerning the nature of the disability or religious belief and the need for a reasonable accommodation;
- (7) Amount of time taken to process the request;

(8) Whether the request was granted, denied, or partially granted and denied, the identity of the deciding official, and the reason(s) for any denial or partial denial;

(9) Information about whether providing the requested accommodation would present an undue hardship for the Department; and

(10) Sources of technical assistance consulted in identifying a reasonable accommodation, including interim or alternative accommodations.

Information concerning the nature of the disability or religious belief and the need for the requested reasonable accommodation includes:

(1) Documentation submitted to the Department by the requestor or the requestor's representative in support of their reasonable accommodation request;

(2) Type(s) and description(s) of the accommodation(s) requested;

(3) Cost(s) and expense(s) associated with the requested accommodation; and

(4) How the requested reasonable accommodation would assist in a requesting employee's or applicant's performance of their essential job duties; otherwise eliminate a barrier to equal employment opportunity caused by the disability or religious belief; and/or enable

participation in a meeting, event, program, or activity conducted by the Department.

RECORD SOURCE CATEGORIES:

Information in this system is provided by covered individuals, including current and former Department employees; applicants for employment at the Department; covered employees' and applicants' authorized representatives (e.g., a family member or an attorney who is representing them); and the covered employees' and applicants' medical providers. Information in this system also may be obtained from other persons or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Under the Privacy Act of 1974, as amended (Privacy Act), the Department may disclose individually identifiable information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose(s) for which the record was collected. Under the Privacy Act, the Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. However, any disclosure made by the Department of information from these records must also comply with any

confidentiality provision that is contained in any other applicable Federal law, which may include Section 501 of the Rehabilitation Act (Section 501), the ADA, or title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. 2000ff et seq., and 29 CFR 1635.9.

Section 501 prohibits the Department from discriminating against qualified applicants or employees on the basis of disability and further restricts how the Department must collect and maintain information about the medical condition or history of applicants and employees. Section 501 requires the Department to maintain such information on separate forms and in separate medical files, to treat it as a confidential medical record, and to disclose it only in very limited circumstances that do not include all of the routine uses listed below. 29 CFR 1630.14(b)(1), (c)(1), and (d)(1). See also 29 U.S.C. 791(f) (in part applying the standards under title I of the Americans with Disabilities Act of 1990 to Section 501). GINA prohibits the Department from discriminating on the basis of genetic information in its employment decisions, requires that genetic information about applicants, current employees, and former employees be maintained on separate forms and in separate medical files, treated as confidential medical records, and disclosed only in very limited circumstances that do not include all of the routine uses listed below. The disclosure by the Department of any information that is

protected by the confidentiality provision of another Federal law, such as Section 501 or the GINA, may only be made where the disclosure would be permissible under both the Privacy Act and the confidentiality provision of such other Federal law.

(1) *Congressional Member Disclosure.* The Department may disclose information to a member of Congress and to their staff from the records of an individual in response to an inquiry from the member made at the written request of and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(2) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

- (i) The Department or any of its components;
- (ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity if the U.S. Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in their individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, or Witnesses.* If the Department determines that disclosure

of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to a party, counsel, representative, or witness to the judicial or administrative litigation or ADR.

(3) *Enforcement Disclosure.* If information in this system of records, alone or in connection with other information, indicates a violation or potential violation of any statutory, regulatory, or legally binding requirement, the Department may disclose records to an entity charged with investigating or prosecuting such violation or potential violation.

(4) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record in this system of records in the course of investigation, fact-finding, or adjudication, to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person or entity designated to resolve issues or decide the matter.

(5) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance

procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(6) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under FOIA or the Privacy Act.

(7) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to the employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(8) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or

national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(9) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(10) *Investigative Disclosure.* The Department may make disclosures to officials of the Merit Systems Protection Board (MSPB), the Office of the Special Counsel (OSC), and the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices in the Federal Sector, examination of Federal affirmative employment programs, or compliance by Federal agencies with functions vested in the MSPB, OSC, or EEOC.

(11) *National Archives and Records Administration Disclosure.* The Department may disclose records to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are in hard copy (i.e., paper) and digital or other electronic form. Digital and other electronic images are stored on a storage area network on an encrypted server within a secured and controlled environment. Records, whether paper or electronic, may be stored in a separate, secure location at the Department's headquarters or at the program office level.

If a Department employee requests a reasonable accommodation for a disability, then medical documentation supporting their reasonable accommodation request is kept in a confidential file, separate and apart from the requesting employee's Official Personnel Folder and the employee performance file.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the reasonable accommodation requestor's name, reasonable accommodation request date, description or type of reasonable accommodation requested, the Department program office's name, and/or date or title of the meeting, event, program, or activity conducted by

the Department for which a reasonable accommodation was requested.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with General Records Schedule (GRS) 2.3, Item 010 (DAA-GRS-2018-0002-0001) and Item 020 (DAA-GRS-2018-0002-0002). GRS 2.3, Item 010, requires destruction of records when three (3) years old, with longer retention authorized if records are required for business use. GRS 2.3, Item 020, requires destruction of records three (3) years after a Department employee separates from the Department or all appeals of a reasonable accommodation decision have been concluded, whichever occurs later, with longer retention authorized if records are required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the Department's sites, and the site of the Department's contractor, where this system of records is also maintained, is controlled and monitored by security personnel who check each individual entering the building for the individual's employee or visitor badge. The computer systems employed by the Department offer a high degree of resistance to tampering and circumvention. These security systems limit data access to Department and contract staff on a "need to know" basis and control individual users' ability to access and alter records

within the system. Direct access to this system of records is limited to Reasonable Accommodation Program staff or Department employees who have a need to know the data for the performance of their official duties, and who have appropriate clearances and permissions.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in this system of records, contact the system manager at the address listed above. You must provide the system manager with the necessary particulars such as your full, legal name, date of birth, work address, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Requesters must also specify, among other things, the records sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at the address listed above. You must provide your full, legal name, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. You must also specify, among other things, the particular

records being contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager at the address listed above. You must provide the system manager with the necessary particulars such as your full, legal name, date of birth, work address, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2022-13057 Filed: 6/16/2022 8:45 am; Publication Date: 6/17/2022]